

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 400 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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COMMISSIONER OF INOCEM TAX

Versus

M/S. G DALABHAI & COMPANY

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Appearance:

MR M.J. THAKORE FOR MR MANISH R BHATT for Petitioner  
MR D.A. MEHTA, MR R.K. PATEL AND MR B.D. KARIA FOR  
MR KC PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 09/12/96

ORAL JUDGEMENT (Per Rajesh Balia,J.)

At the instance of the Commissioner of Income Tax, the Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following questions of law arising out of ITA No.414/Ahd/1982 for assessment year 1975-76.

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has been right in law in confirming the view taken by the C.I.T (Appeals) that on the death of Shri Dalabhai Veribhai on 26.4.1974 the old partnership firm was dissolved and consequently two separate assessments were required to be made first for the period covering upto 26.4.74 and second for the period from 27.4.74 to 31.3.75?"

The question has arisen in the following

circumstances. One of the partner of the assessee firm died on 26.4.1974 and in his place his widow was taken as partner from the next day. The assessee claimed that a new firm came into existence from 27.4.74 and so two separate assessments should be made one for the period upto 26.4.74 and another for the period following. The Income Tax Officer rejected this claim but the CIT (Appeals) applying the decision of this High Court in the case of Harjivandas Hathibhai (1977) 108 ITR 517 (Guj.) allowed the appeal of the assessee. The Tribunal confirmed the order.

It is the fundamental principle of the Law of Partnership that unless there is a contract to contrary death of a partner results in dissolution of firm immediately though settlement of accounts may be taken out later. That principle has been applied by this Court in Hargovindas Hathibhai (*supra*).

The learned Counsel for the Revenue also does not dispute about this position of law. The Supreme Court has subsequently taken the same view in the case of Wazid Ali Abid Ali vs.CIT, Lucknow - 169 ITR 761. It is not the case where any contract to contrary has been found to exist. In view of the aforesaid, question referred to us must be answered in the affirmative in favour of the assessee and against the Revenue and we do so. Accordingly reference stands disposed of with no order as to costs.

Before parting with the case, we notice with anguish the language used by the Income Tax Officer in his assessment order saying that "With due respect to the decision of the Gujarat High Court, I do not follow the same." The Income Tax Officer in not following the decision of the Gujarat High Court within whose supervisory territory he was functioning, is far from satisfactory, that is the least we can say. The minimum decorum of system of hierarchy that Tribunals in the administration of justice and their judicial subordination to the High Court of the territory in which they function requires that they restrain in the use of proper expression while following or not following the decision of the High Court.

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